

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

CC Docket No. 96-98

Inter-Carrier Compensation)
for ISP-Bound Traffic)

CC Docket No. 99-68

To: The Commission)

REPLY COMMENTS OF AIRTOUCH PAGING

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REPLY COMMENTS OF AIRTOUCH PAGING

AirTouch Paging ("AirTouch") hereby submits its reply comments on the *Notice of Proposed Rulemaking* released in the above-captioned proceeding.^{1/} The following is respectfully shown:

**The Comments Demonstrate the Importance of
Preserving and Extending Section 252(i) Rights**

The AirTouch comments in this proceeding set forth its view that the most favored nation ("MFN") rights in Section 252(i) are among the most important created by the 1996 Act.^{2/} AirTouch also demonstrated that many LECs are not willingly embracing

^{1/} FCC 99-38, released February 26, 1999.

^{2/} AirTouch Comments, Section II.

their obligations under this important statutory section.^{3/} The comments of several other parties in this proceeding echo the views of AirTouch. PCIA properly points out that Section 252(i) represents a critical tool in promoting non-discriminatory agreements, and urges the Commission to affirm requesting carrier's broad rights under this provision.^{4/} MCI urges the Commission to avoid placing artificial limitations on the exercise of MFN rights because of the importance of these protections in fostering a competitive marketplace.^{5/} ALTS points out specific examples where ILECs are not complying with the mandate of Section 252(i).^{6/}

The most compelling evidence of the need to reaffirm and clarify Section 252(i) rights comes from reading the comments of the LECs themselves. For the most part, the incumbent LECs seek in their comments to narrowly construe their MFN obligations, and urge the Commission to place limitations on the ability of requesting carriers to invoke Section 252(i). For example, GTE urges the Commission to prevent a requesting carrier from opting into another carrier's agreement during the voluntary renegotiation period at the end of the initial contract term. GTE comments, p. 26. This proposal, if adopted, would effectively gut Section 252(i). AirTouch's experience indicates that

^{3/} AirTouch Comments, Section III B.

^{4/} Comments of the Personal Communications Industry Association at Section III.

^{5/} Comments of MCI, p. 21.

^{6/} Comments of the Association for Local Telecommunications Services at p. 20.

interconnection contracts can have renegotiation periods that run for 135 to 160 days prior to the expiration or termination of the agreement (so that the end of the initial term does not arrive until the arbitration window under Section 252(b)(1) of the Act has opened). Obviously, a restriction on the exercise of Section 252(i) rights during a renegotiation period of this duration would greatly inhibit the benefit of the statutory MFN right.

Notably, the simple mechanics of the Section 252(i) request process can cause a requesting carrier, even one who is exercising great diligence, to lose considerable time at the front end of the term of an adopted agreement. The process of identifying approved agreements, analyzing their provisions to ascertain whether there are terms worthy of being adopted, initiating a formal Section 252(i) request and concluding a Section 252(i) agreement, can take considerable time.^{7/} If time at the beginning of the adopted agreement is lost in this manner, and the ability to opt into an agreement at the end of a term is lost as a result of GTE's renegotiation period blackout, the remaining Section 252(i) rights become mere shadows of the protections Congress and the FCC were seeking to erect.

In sum, the Commission should adopt the approach recommended by AirTouch and others by strongly reaffirming the Section 252(i) rights of requesting carriers, and

^{7/} In AirTouch's experience, many LECs erect additional hurdles to be overcome during the 252(i) process, including the negotiation of a Non-Disclosure agreement. In some cases, just getting the attention of the LEC can take weeks.

offering guidance to assure that LECs do not succeed in their efforts to frustrate other carriers who are seeking to exercise those rights.

II. The Concerns Expressed About the “Daisy Chain” Effect of Section 252(i) are Ill-Founded

Several commenters recommend that the Commission limit the ability of a requesting carrier to invoke Section 252(i) by ruling that such a carrier only is entitled to an agreement extending for the remaining term of the base agreement which is being adopted. The primary reason offered for this proposed restriction is that otherwise a series of subsequent requesters could create a “daisy chain” of successive agreements that could conceivably extend the original agreement in perpetuity. See, e.g., Comments of Ameritech, p. 25 (allowing a subsequent agreement to extend beyond the terminal date of the original agreement raises a risk of a single agreement being extended in “perpetuity”); Comments of GTE, p. 23 (describing the “daisy chain”); Comments of SBC, p. 32 (expressing concerns about “perpetual agreements”); Comments of the PUC of Texas, p. 8-9 (describing a never ending “loop of successive MFNs”); Comments of US West, p. 10 (expressing concern that a single contract will be extended “indefinitely”).

These expressed concerns are misplaced. As was pointed out in detail in the AirTouch Comments, the statutory scheme, properly construed, does not present this dilemma. See AirTouch Comments, p. 5-6. Section 252(i) expressly provides that MFN rights only apply to agreements that have been approved by state commissions pursuant to Section 252 of the Act. Section 252(e) in turn only requires that agreements be filed

with state commissions for approval if they are arrived at by negotiation (i.e. those entered pursuant to the procedures specified in Section 252(a)) or by arbitration (i.e. those entered pursuant to the procedures specified in Section 252(b)). There is no requirement that agreements adopted pursuant to Section 252(i) be filed and approved by state commissions. Thus, a follow-on agreement, since it would not be approved pursuant to Section 252,^{8/} could never become the basis of a subsequent 252(i) request, and no "daisy chain" exists.^{9/}

With this proper understanding, the Commission should avoid placing preconceived restrictions on the term of an agreement adopted pursuant Section 252(i). Rather, the Commission should accord a requesting carrier an agreement term that allows it to enjoy the same economic benefit, including duration of the agreement, as was enjoyed by the original party.

III. Ameritech's Reading of Section 252(i) Must be Rejected

The Ameritech Comments take what can only be viewed as a radical view of Section 252(i). According to Ameritech, the rates that are paid pursuant to a reciprocal

^{8/} Some states may have local rules which require the filing of these agreements (e.g. General Order 96-A in California), but that filing requirement is not pursuant to Section 252; thus, it would not create additional opportunities for a daisy chain.

^{9/} MCI points out some of the methods LECs will be able to use to completely eviscerate 252(i) rights if the term limitation is adopted. MCI Comments, pp. 21-22. Only AirTouch's view that the agreement must remain available during its initial term and during any extended term will eliminate these problems.

compensation agreement are not an “interconnection, service or network element” to which MFN rights apply. Ameritech Comments, Section II D.

This Ameritech view clearly is incorrect from a statutory reading and as a matter of public policy. As the Commission clearly articulated in its Local Competition First Report, Section 252(i) means that a carrier may obtain access “**at the same rates**, term and conditions as contained in an approved agreement”. 11 FCC Rcd 15499, para. 1314 (1996) (emphasis added). This explicit reference to the entitlement to an agreement “upon the same rates” is included in Section 51.809(a) of the FCC rules. Notably, this “pick and choose” rule was just upheld by the U.S. Supreme Court, which expressly quoted the FCC’s requirement that agreements be offered “upon the same rates, terms and conditions”. AT&T Corp. V. Iowa Utilities Board, 119 S.Ct. 721 at Section IV (1999). Under these circumstances, there is absolutely no basis for Ameritech to argue that reciprocal compensation rates are not subject to a Section 252(i) request.

Ameritech seeks to buttress the case for excluding compensation rates from MFN treatment by arguing that rates are intended to be cost-based and that it would be unfair to allow a requesting carrier to adopt rates from an agreement of another carrier which had a different cost structure. Ameritech Comments, pp. 24-25. This argument fails to recognize a basic premise of the TELRIC cost model that the FCC and most state commissions have endorsed. The approved rate is intended to reflect not the historical or actual cost of a particular carrier, but rather the idealized costs of an efficient, least-cost carrier. Properly applied, this means that two carriers who have different actual cost structures should have roughly equivalent TELRIC costs for comparable services. Thus,

allowing a subsequent carrier to opt into a previously-approved agreement reflecting
TELRIC rates should not result in the rate anomaly cited by Ameritech.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Shandila Collins, do hereby certify that I have on this 27th day of April, 1999, caused true and correct copies of the foregoing REPLY COMMENTS OF AIRTOUCH PAGING to be sent by first-class United States mail, postage prepaid, or by hand delivery to the following:

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